Summary of Investigation Report

Complaint against Lands Department and Land Registry

The Complaint

In 2000, the complainant discovered that without his knowledge, the title to a lot owned by him in the New Territories had been wrongly registered under the names of another four persons. He then enquired of a District Lands Office ("DLO") under the Lands Department ("Lands D") about the land title. However, DLO did not respond to his enquiries properly. In the same year, he also requested the Land Registry ("LR") to rectify the error in its Land Register, but his request was rejected.

2. Four years later, through his lawyer, the complainant requested DLO to take action and asked LR to correct the records. It was not until 2007 that DLO replied to say it could not amend the records. Meanwhile, LR indicated that it did not have responsibility for such rectification.

3. The complainant, therefore, complained to this Office against Lands D and LR for failing to help him resolve the problem.

Sequence of Events

4. The complainant purchased the subject lot in 1963 and had never assigned it to anyone. However, in 1975, staff of the Counter Conveyancing Service* of a District Office under the former New Territories Administration ("NTA") wrongly included the lot in an Assignment as Gift ("the Assignment") and its Memorial and recorded the subject lot in the Land Register as being owned by another four persons.

5. In 2000, not having received any Notice of Rateable Value for his lot, the complainant enquired of DLO. He then discovered that the land title for the lot had been altered. He, therefore, lodged a complaint with DLO. However, DLO merely advised him to consult his lawyer if the land title was illegally possessed.

6. In 2004, the complainant's lawyer enquired of DLO. As the matter involved land records, DLO referred the case to LR. In response, LR promptly informed the lawyer that it was in no position to amend the Land Register since the Memorial of the Assignment had been prepared by NTA.

7. Between 2004 and 2005, the complainant's lawyer wrote to DLO four

---

* Since the early 1990's, the Counter Conveyancing Service has been taken over by Lands D.

times to request for action. However, it was not until 2006 that DLO sought in-house legal advice.

8. Subsequently, DLO was advised that if the subject lot had been mistakenly included in the Assignment by NTA, Government should rectify the error. In that connection it was a matter for LR.

9. Against this background DLO consulted LR in 2007. LR advised that the Land Registration Ordinance, Cap. 128, does not empower the Land Registrar to delete documentary records on land registration.

10. DLO sought in-house legal advice again. DLO was advised that in the absence of a copy of the Assignment, it could not be sure if the error appeared only on the Memorial and whether the lot had ever been wrongly assigned to others. Since Government was not a party to the Assignment, DLO could not rectify the error; the complainant would have to take legal action himself to put the matter right. DLO replied to the complainant's lawyer accordingly.

Lands D's Response

11. Lands D indicated that it would find ways to rectify the error if the complainant could prove that the lot had been wrongly included in the Assignment. In the meantime, if the complainant could contact the parties to the said Assignment and ask them to confirm in writing that they had no legal title to the lot, he might instruct his lawyer to register such confirmation with LR.

12. In 2008, DLO informed the complainant of the above suggestion. As four persons had been named on the Memorial as owners, the complainant would need to contact them all and obtain their written confirmation that they had no legal title to the subject lot.

LR's Response

13. Under the Land Registration Ordinance, LR is mainly responsible for maintaining a Land Register and is not empowered to rectify or delete any error in registration documents. LR stated that it had not received the complainant's request for rectifying the error in 2000.

14. Upon our intervention, LR carefully reviewed the complainant's case. LR considered that although the complainant could himself apply for a court order to change the records, the procedures would be cumbersome. As the error had been made by NTA, Government as a whole should be responsible for rectifying it.

15. In the absence of any legal basis or authority to amend the Assignment, LR took an unprecedented step and registered a statutory declaration as an annotation to the said error in the Memorial. In effect, the Land Register was rectified to indicate the complainant as the owner of the lot.

Our Comments

For Lands D

16. In view of the complicated legal issues involved, it was justified for DLO to take time to clarify matters. However, between 2004 and 2005, the complainant's lawyer had made four written requests to DLO for action and progress report. Yet, DLO did not seek legal advice until January 2006. We considered that an inordinate delay and hence, maladministration.

17. Moreover, the lot in fact belonged to the complainant but the land title had been altered without his knowledge. He had already spent much time and efforts on the issue. We consider it unreasonable of DLO to ask him to take legal action himself to have the records rectified. Whether there was also an error in the Assignment, the Memorial and the land records were both incorrect. This was unfair to the complainant and had caused him much concern. The Administration should be responsible for rectifying the error made by NTA staff. Lands D ought to have acted promptly and positively to assist the complainant in finding a solution with LR.

18. Against this background, The Ombudsman considered the complaint against Lands D **substantiated.**

For LR

19. Although LR had neither the authority nor the responsibility to rectify an error in registration documents, it eventually adopted a novel approach to help the complainant. While LR did not produce an instant or total solution, it had taken the extra step to bring relief to the complainant. Above all, it recognised that Government is one entity and did not leave the matter to Lands D.

20. The Ombudsman, therefore, considered the complaint against LR **unsubstantiated.**

Recommendations

21. The Ombudsman recommended that Lands D :

(a) promptly confer with LR on future cooperation in handling similar cases to avoid delay and injustice to the parties involved ; and

(b) instruct its staff to handle requests from the public positively and actively, assisting them as far as possible to resolve their problems.

22. Lands D accepted our recommendations.

Office of The Ombudsman
October 2009